February 23, 2016

The Honorable Mary Jo White, Chair  
Brent J. Fields, Secretary  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090


Dear Chair White and Mr. Fields,


In recent years, ATSs have grown in importance to institutional and retail investors, whose orders either trade directly on ATSs, or are otherwise affected by ATS activity. As the number of ATSs has proliferated, and as the market share of the largest ATSs has grown, ATS subscribers – or the clients on whose behalf they trade – have become increasingly reliant on ATS operators to fully and honestly disclose how their trading venues operate, including the manner in which subscriber orders are routed, matched, and executed.

The Commission’s new proposed rules are a positive step towards ensuring fairness and transparency for ATS subscribers. The proposed rules would require detailed disclosure of several topics that my Office and has identified as being especially important for ATS subscribers to understand, including:

- Segmentation of traders and order flow in the ATS;
- Use of smart-order routers and algorithms associated with subscriber orders;
- Types or classes of subscribers trading in the ATS;
• Rules governing trading priority or pricing methodology;
• The source and specific purpose of market data used by the ATS; and
• Differences, if any, between products or services offered to different ATS
  subscribers, or between subscribers and the ATS operator itself (including its
  affiliates).

Recently, my Office, in conjunction with the Commission’s Division of Enforcement,
announced resolutions of investigations concerning two of the largest ATS operators. Our
investigations determined that those companies were misleading investors about the manner in
which their venues operated, how client orders were being routed into their ATSs for execution,
and, in certain cases, how the ATS operator gave undisclosed, preferential treatment to high
frequency trader subscribers. In both of those matters (and in other matters that the Commission
has announced publicly), enhanced disclosures could have avoided at least some of the harmful
conduct our offices identified, by ensuring that detailed information was available to subscribers
before they traded.

ATSs are colloquially called “dark” pools because orders are, generally, not visible prior
to execution. They are not called dark pools because investors are supposed to be in the dark
about how they operate. Quite the opposite. The market only works fairly when every
participant, large and small, understands all meaningful details about how an ATS operates, how
their broker is routing their orders, and whether potentially conflicted business relationships exist
between their broker and other market participants.

I applaud the Commission for proposing strong rules to ensure that investors, even the
most sophisticated investors, understand how the ATSs in which they trade are operated, and
whether their electronic brokers have business relationships that favor certain traders over others.
The Commission has taken a meaningful step toward giving traders access to the information
they need in order to make informed trading decisions. I believe that these proposed rules will
increase public confidence in the markets.

My Office will continue to be diligent in monitoring whether ATS operators are in fact
operating consistently with their public representations and their legal obligations. If they are
not, we will not hesitate to take action when appropriate.

Respectfully,

Eric T. Schneiderman